



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 29, 1998

Mr. Kevin D. Pagan
Assistant City Attorney
City of McAllen
P. O. Box 220
McAllen, Texas 78505-0220

OR98-2542

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119268.

The City of McAllen (the "city") received a request for documents relating to an assault case. You contend that the documents are excepted from disclosure under section 552.108 of the Government Code.

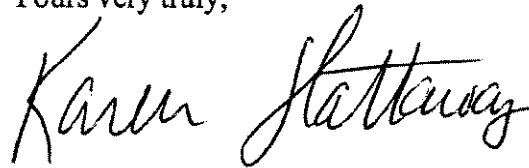
Chapter 552 of the Government Code imposes a duty on a governmental body seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that information is made confidential by another source of law or affects third party interests).

According to documentation you submitted to this office, the city received the request for information on July 22, 1998. However, the postmark on your correspondence to this office indicates that you did not request a decision from this office until August 13, 1998, more than ten business days after the city received the request. A section 552.108 claim is

discretionary, and a governmental body generally waives this claim by failing to timely raise it. *See* Open Records Decision No. 216 (1978). Therefore, the requested documents are presumed public and must be released to the requestor.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Karen Hattaway".

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/mjc

Ref: ID# 119268

Enclosures: Submitted documents

cc: Ms. Irene Guerra
2813 Orizaba St.
Weslaco, Texas 78596
(w/o enclosures)

¹We note that some of the information in the submitted documents implicates the privacy interests of the requestor. The requestor's own privacy interests cannot be the basis for withholding information from her, but the city should exercise caution in releasing this information to the general public. *See* Gov't Code §§ 552.007, 552.023.